

REMARKS

Summary of Office Action

Claims 1, 3-10, 12, 13, 15-19, 21, and 24-37 were pending in this application.

Claims 1, 3-7, 12, 13, 15-19, 21, 24, 25, 28-32, and 35-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Knudson et al. U.S. Patent Publication No. 2002/0120933 ("Knudson") in view of Zigmond et al. U.S. Patent No. 6,698,020 ("Zigmond").

Claims 8 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Knudson and Zigmond in view of Alten et al. U.S. Patent No. 5,635,978 ("Alten").

Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Knudson, Zigmond, and Alten in view of and Marshall et al. U.S. Patent No. 5,828,420 ("Marshall").

Claims 26, 27, 33, and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Knudson and Zigmond in view of Schein et al. U.S. Patent Publication No. 2003/0208758 ("Schein").

Applicant's Reply

Applicant has amended claims 1, 3-10, 13, 15-19, 26, 28, 33, and 35 to more particularly define applicant's invention. Support for the amendments can be found, for example, on page 6, line 25 through page 8, line 2 and page 12, line 24 through page 14, line 5 of applicant's specification.*

* The recitation of support for independent claims 1 and 13 is not intended to be exclusive. There may be support found elsewhere in the specification.

Reconsideration of this application in light of the following remarks is respectfully requested.

A. Ineligible Use of a Reference as Prior Art

According to MPEP § 702.02:

If the application properly claims benefit under 35 U.S.C. § 119(e) to a provisional application, the effective filing date is the filing date of the provisional application for any claims which are fully supported under the first paragraph of 35 U.S.C. 112 by the provisional application.

Applicant's application was filed under 35 U.S.C. 371 on August 29, 2000, but claims the benefit of PCT International Application No. PCT/US98/25490 filed on December 1, 1998 and U.S. provisional application Nos. 60/067,483 and 60/067,038, both filed December 1, 1997 (hereinafter "the provisional applications"). These provisional applications are included in the Appendix attached to this reply. Thus, applicant's effective filing date is December 1, 1997. Knudson's effective filing date is April 30, 1998.

Support for amended independent claims 1 and 13 can be found, for example, on page 8, line 36 through page 10, line 37 and page 17, lines 16-38 of provisional application No. 60/067,483.**

Applicant's effective filing date is before the effective filing date of Knudson and applicant's claims are fully supported by the provisional applications.

** The recitation of support for independent claims 1 and 13 is not intended to be exclusive. There may be support found elsewhere in the provisional applications.

Accordingly, Knudson is not prior art to applicant's claimed invention.

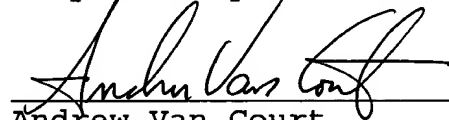
B. Rejections under 35 U.S.C. § 103(a)

The Examiner rejected applicant's claims 1, 3-10, 12, 13, 15-19, 21, and 24-37 as being unpatentable over Knudson in various view of at least one of Zigmond, Alten, Marshall, and Schein. The Examiner implicitly concedes that without Knudson, whether taken alone or in combination Zigmond, Alten, Marshall, and Schein do not show or suggest all of the elements of applicant's claims 1, 3-10, 12, 13, 15-19, 21, and 24-37. Accordingly, for at least this reason the rejection of claims 1, 3-10, 12, 13, 15-19, 21, and 24-37 should be withdrawn.

Conclusion

The foregoing demonstrates that claims 1, 3-10, 12, 13, 15-19, 21, and 24-37 are allowable. This application is therefore in condition for allowance. Reconsideration and allowance of this application are accordingly respectfully requested.

Respectfully submitted,



Andrew Van Court
Registration No. 48,506
Agent for Applicant
Fish & Neave IP Group
Ropes & Gray LLP
Customer No. 1473
1251 Avenue of the Americas
New York, New York 10020
Tel.: (212) 596-9000
Fax: (212) 596-9090